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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A.M. et al, Persons Coming Under the  
Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JESUS M.,

Defendant and Appellant.

B232900

(Los Angeles County  
Super. Ct. No. CK83978)

APPEAL from an order of the Superior Court of Los Angeles County.  
Timothy Saito, Judge. Affirmed.

Rich Pfeiffer, under appointment by the Court of Appeal, for Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County  
Counsel, and Judith A. Luby, Deputy County Counsel, for Respondent.

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Father Jesus M. (father) appeals from the dependency court order taking jurisdiction of his three children after finding that he had sexually abused one of them. We affirm because there was substantial evidence to support that finding, and also reject father's contention that the dependency court's visitation order was defective because it did not specify the frequency of father's visits.

### **FACTS AND PROCEDURAL HISTORY<sup>1</sup>**

On the night of September 6, 2010, father came home late and found his daughter, 13-year-old A.M., in her bedroom with a 14-year-old boy. The boy ran out the bedroom window, and father concluded they had been engaged in sexual conduct. Father was so angry he threw a punch in A.M.'s direction. Father claimed he punched the wall, while A.M. claimed he hit her in the face. She called the police, and when they arrived she told them that not only had father punched her, he had been sexually molesting her for years.

As a result, the Los Angeles County Department of Children and Family Services filed a petition alleging that A.M. and her sisters – 10-year-old J.M. and 6-year-old V.M. – had been harmed or were at risk of harm because father had physically and sexually abused A.M.

The jurisdictional and dispositional hearing was held over several days during February and March 2011. Several reports by Department social workers were admitted into evidence without objection. In these, A.M. described how her father would regularly call her into his bedroom to get a massage or say goodnight as a pretext to rub her breasts and touch her thighs. Eventually he progressed to rubbing his penis against the outside of her vagina until he ejaculated. This behavior started when she was six years old, and occurred almost daily, according to A.M. Father and mother were divorced, and A.M.

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<sup>1</sup> Father's primary contention on appeal is that even though the evidence was in conflict concerning whether he sexually abused his daughter, a heightened-standard applies to evaluating whether her testimony was worthy of belief. In light of father's contention, we have distilled the facts to illustrate the nature of the evidentiary conflicts.

told mother about the abuse during the divorce proceedings, but recanted after father said he would kill himself if he could not be with his children.

A.M. denied having sex with the boy that father found in her room, and said she made the boy leave because her father had once grabbed and choked another boy who was holding her hand, leading her to fear what father might do. As for the punch father threw, A.M. said it grazed her under one eye, and did not make full contact. Father had never before struck any of the children, she said.

A.M.'s testimony was substantially in accord with the statements she gave to the social workers.

Father consistently denied the allegations. He intended to, and did, punch the wall, not A.M. Father's girlfriend, who was in the room when the incident happened, agreed. As for the molestation, father believed mother might have engineered the false allegations during their divorce proceedings. Mother told a social worker that although she believed 90 percent in A.M.'s molestation claim, 10 percent of her was suspicious because A.M. had once falsely accused mother of taking drugs. A.M.'s maternal great-grandmother said she was scared of mother because she was a liar who comes to believe her own lies. According to the great-grandmother, A.M. told her that mother told A.M. to lie about father molesting her.

After hearing the evidence and the parties' arguments, the dependency court found that father never made any real contact when he threw his punch near A.M.'s head, stating it was debatable whether father ever intended to hit her at all. Therefore, the court dismissed the physical abuse allegations. The trial court sustained the sex abuse allegations, finding A.M. very credible. The court expressly rejected the contention that A.M. had been coached.

The court declared all three children dependents of the court and gave custody to the mother. Father was ordered to attend both individual counseling and a program for sex offenders. Monitored visitation for father was ordered, but the duration and frequency were not specified.

Father contends the evidence supporting the molestation allegations was insufficient, and that the visitation order must be reversed and remanded so the dependency court can specify the amount of visitation.

## **DISCUSSION**

### **1. *The Sex Abuse Finding is Supported by Substantial Evidence***

Father acknowledges that we must affirm the dependency court's jurisdictional and dispositional orders if they are supported by substantial evidence. (*In re E.B.* (2010) 184 Cal.App.4th 568, 575-575.) He also acknowledges that there are conflicts in the evidence which would ordinarily justify a determination that the evidence was sufficient. (*Ibid.*) He contends that the heightened standards of reliability announced in *In re Lucero L.* (2000) 22 Cal.4th 1227 (*Lucero L.*) and *In re Cindy L.* (1997) 17 Cal.4th 15 (*Cindy L.*) require greater scrutiny of A.M.'s statements, especially given the number of conflicts in the evidence and the trial court's finding that A.M. was wrong when she claimed father punched her in the face.

Father has completely misread these decisions. The *Cindy L.* court acknowledged that a child's hearsay statements contained in social workers' reports were admissible during dependency proceedings. However, if the child was unavailable to testify, then a heightened showing of reliability was required before those statements would be allowed in evidence: (1) the court must find that the time, content, and circumstances of the statement provide sufficient indicia of reliability; (2) if the child is not available for cross-examination, there must be corroborating evidence of the abuse; and (3) advance notice must be given to other interested parties so they have a chance to contest the evidence. (*Cindy L.*, *supra*, 17 Cal.4th at pp. 29-30.)

In response to *Cindy L.*, the Legislature amended Welfare and Institutions Code section 355 to ensure the admissibility of social study reports that contained hearsay. Section 355 now provides that any legally admissible evidence relevant to the allegations

of a dependency petition is admissible. (Welf. & Inst. Code, § 355, subd. (a).)<sup>2</sup> To the extent allowed by subdivisions (c) and (d), social worker reports and any hearsay they contain are admissible and competent evidence upon which a finding of dependency jurisdiction may be based. (§ 355, subd. (b).) If a party objects to specific hearsay in a report, that hearsay evidence is not enough by itself to support a jurisdictional finding unless one of four exceptions applies, including when the hearsay declarant is available for cross-examination. (§ 355, subd. (c)(1)(D).)

The *Lucero L.* court considered whether section 355 controlled even when the hearsay statement came from a child who was incompetent to testify. The court held that the normal requirements of section 355 governed the initial admissibility of such statements, but concluded that the heightened reliability standard announced in *Cindy L.* should control before the trial court could rely exclusively on the hearsay statements when making its jurisdictional findings. (*Lucero L.*, *supra*, 22 Cal.4th at pp. 1242-1244, 1247-1248.)

*Lucero L.* and *Cindy L.* have no application here. To the extent father contends that A.M.'s hearsay statements in the various social workers' reports should not have been admitted, we note that father, who was represented by counsel during the dependency hearings, raised no objection to the introduction of the reports. Furthermore, A.M. was not only available for cross-examination, she was cross-examined. Therefore, by statute the hearsay statements were admissible and the dependency court could rely on those statements without more when making its findings. Regardless, the dependency court said it found A.M.'s testimony credible, meaning that it did not rely exclusively on A.M.'s hearsay statements in the reports.

To the extent father contends that the heightened reliability threshold of *Lucero L.* and *Cindy L.* should govern our substantial evidence analysis, he cites no authority for such a proposition. Instead, he contends that because A.M. was shown to have lied about some things, we must conclude her version of events must be disregarded. This is

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<sup>2</sup> All further section references are to the Welfare and Institutions Code.

contrary to the well-accepted rules regarding the substantial evidence rule. (*Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968 [under substantial evidence rule, we must view the evidence in the light most favorable to the prevailing party, resolving all conflicts in favor of the judgment, even when the testimony is justifiably suspicious].)

Based on A.M.'s statements in the social study reports and her testimony at the dependency hearing, we hold that the dependency court's finding that the sexual abuse-related allegations were true is supported by substantial evidence.

## 2. *The Visitation Order Was Proper*

The dependency court order monitored visitation for father, but did not specify the frequency or duration of those visits. Father contends this was error, and that we should reverse that part of the order and remand for a new hearing on that issue. This is not a case where a visitation order gives a child, parent, or therapist discretion to determine whether visitation occurs at all. Instead, the court clearly ordered visitation for father. Its failure to specify the frequency or duration of the visits under these circumstances is not improper. (*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1375-1376; compare *In re S.H.* (2003) 111 Cal.App.4th 310, 319 [visitation order that did not specify frequency or duration of visits was improper because it also gave children discretion to refuse a visit].)

We alternatively hold that the issue was waived because father raised no objection to the order during the dependency proceedings. (*In re Anthony P.* (1995) 39 Cal.App.4th 635, 640-642 [failure to raise sibling visitation issue].) The record does not show that father has had any problems arranging visitation, and we note that he remains free to seek modification of the visitation order under section 388.

## **DISPOSITION**

The jurisdictional and dispositional orders of the dependency court regarding father are affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.